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01-AFC-4
CALIF ENERGY COMMISSION

JUL 10 2003

RECEIVED IN DOCKETS

State of California
Energy Resources Conservation and Development Commission

In the matter of :)	Docket No. 01-AFC-04
)	
)	Comments on the Errata
)	to the RPMPD
Application for Certification)	
East Altamont Energy Center)	

7-10-03
Date

Robert Sarvey
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PROOF OF SERVICE (REVISED 11/14/02) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 7/10/03

Introduction

Calpine has chosen to build their 1100 MW plant on the Eastern side of the Altamont Pass which geographically lies in the San Joaquin Valley Air Shed. Because of their choice they must be willing to provide mitigation on both sides of the County line. This case is contentious because the major impacts of this facility will be located in San Joaquin County and not Alameda County where the majority of the financial benefits of the plant will occur.

Air Quality

Energy Commission Staff has determined that the projects impacts in the San Joaquin Valley will require additional mitigation of 175 tons per year of Ozone precursors and 50 tons per year of pm-10. The record shows no evidence that any other party performed a CEQA analysis of this project other than the Energy Commission Staff. Both air districts have admitted on the record that they have performed no CEQA analysis of this project. The Chairman Mr. Keese has graciously offered to allow Calpine to build their plant for a mere 66.7 ton per year of additional NOx mitigation one third what has been determined as the CEQA impact of this project. Calpine refuses to even mitigate this obligation.

In their brief the applicant advances several methods by which they can avoid their obligations to the community. The committee has already visited these issues many times and it is inappropriate to raise these issues again. The applicant asserts that the project is not viable under the existing condition AQ-SC5 that the committee has developed. The applicant may be right that this project is no longer viable. Not because of the Energy Commission Staff, not because of the Committee who has made every effort to appease the applicant, but because the applicant is unwilling to provide the air quality mitigation necessary to offset the projects impacts. If the committee is unwilling to adopt the staffs CEQA mitigation they should at least require the applicant to live up to the obligation that it committed to with the pollution control district. That obligation is clearly 66.7 tons per year of NOx reductions over the life of the project in the San Joaquin Valley. It is quite telling that the representative of the SJVUAPCD did not offer any comments at our last hearing on the RPMPD on June 3. Clearly he could have ended all speculation on the 66.8 tons per year controversy but instead chose to remain silent. The reason is that the pollution control district is bound to support the applicant's claims or remain silent on the agreement because of article 5 of the AQMA. That is why the SJVUAPCD is incapable of providing an independent analysis the cornerstone of any CEQA evaluation. The Committee should instead adopt staffs mitigation which presents a clear and scientific analysis of the projects impacts.

The applicant also proposes that the BAAQMD report annual emissions of NOx by the facility and the applicant be allowed to reduce its liability to the community if its NOx emissions fall below permitted levels. This proposal is flawed. The BAAQMD has been negligent in reporting air quality violations by the applicant as evinced in the attached Notice Of Violation Reports (Exhibit 1,2,3) on two of Calpine facilities in the Bay Area the Los Medanos and the Delta Energy project. It is reported by Energy

Commission Staff that the compliance manager is not even aware of these violations. In light of the applicants many violations it is not clear how an authority to construct or a CEC license can be issued for the EAEC as the applicants other plants are both severely out of compliance with their permit conditions and communication between the air district and the CEC compliance manager appears to be lacking.

The applicant has also proposed that the SJVUAPCD be allowed to determine the annual NOx reductions achieved by the AQMA. It has been established that the SJVUAPCD lacks the independence to make such a determination as they are bound by article 5 of their agreement with the applicant to protect the applicant's interests even against the CEC. The applicant and the SJVUAPCD propose to retrofit farm equipment and heavy duty diesel engines. How will these reductions be tracked quantified and verified, and by who. There are no set standards for this equipment since there is no established method to measure these reductions. Reductions are based purely on estimates and source testing will not be feasible. More independent monitoring is necessary even to determine if the applicant will achieve the necessary NOx reductions in any year of operation.

Worker Safety and Fire Protection

Response Times

The committee correctly determined that the response times presented by the Alameda County Fire Department (ACFD) and the applicant were optimistic. The project area is not rural it is quickly becoming urbanized and already suffers from severe urban traffic patterns. Even the back roads that the ACFD has testified they will use during the usual backup over the Altamont Pass are jammed with traffic and provide no shoulder for emergency services that the attached article (Exhibit 4) evinces. Clearly Tracy Fire will be the first responder to any emergency at the EAEC because they will have a station less than three miles away from the facility.

Risk Factors

The applicant and other parties have downplayed the risk associated with the construction and operation of a power plant. The applicant is the owner of the Wolfskill Peaker Plant that recently experienced a gas line explosion. The La Paloma Power Plant has recently had a fire. A substation recently caught fire and burned to the ground. At the writing of these comments the Moss Landing power plant is burning. As the committee has recognized power plants utilize extremely flammable materials in large quantities. The Mountain House Community will be located a half mile from the EAEC. It is important to provide the necessary resources to combat a fire or a toxic release so close to a large residential community. The plant is not in a rural location as many parties have asserted. As ACFD points out Tracy Fire has no hazardous materials response capabilities. Shouldn't Tracy Fire be provided with hazmat equipment and training to protect the 44,000 residents of Mountain House. Will Alameda County accept

responsibility for the failure to provide adequate response as it has erroneously testified it can achieve or is the Energy Commission liable for identifying a significant impact but not providing mitigation as required under the Warren Alquist Act. Who will face the judge and admit their failures and accept the consequences should a disaster strike. Who will be responsible for the worker who suffers brain damage because Alameda County Fire is stuck in traffic and cannot respond in its forecasted "optimistic response times".

First Response

The question here is not who has authority over the project site but who will be the logical first responder. Its not a question of which agency provides more response to the other as Alameda County's comments would lead the committee to believe. In the disputed exhibit that I withdrew (Docket #25837) the newspaper article that I submitted demonstrated that the one fire in the project area had Alameda County arriving as Tracy Fire was rolling up their hoses and going home. Mountain House will have built a fire station manned by Tracy Fire before the EAEC is operational less than three miles away from the EAEC. Tracy Fire currently has a station less than seven miles away from the project site while the closest ACFD Station is at least twice as far away. On page four of Alameda County's comments on the RPMPD it states "If TFD were to receive funding for first response, the first due Engine would respond from Schulte Road at Paterson Pass which would take 10 minutes. The ACFD response time to the EAEC is 10 minutes." The TFD station at Schulte Road is 7 miles away on the East side of the Altamont Pass and the ACFD station in Livermore is over 16 miles away. ACFD has little credibility left in this siting case as it is incapable of estimating reasonable response times for their fire and emergency service responses.

Unmitigated Impacts and Taxpayer Burden

The committee has recognized this impact to the local community and has made an attempt to offer mitigation to the local fire agency that will be the first responder. Tracy fire is the affected agency in all three CEC power plants sited in the project area. The taxpayers in this special district will be required to finance the responses that this facility and the other two power plants will create. While Alameda County's authority over the project site has not and should not be questioned this does not prevent the committee from awarding Tracy Fire the compensation that the committee had provided in the RPMPD. The Errata removes the financial compensation that belongs to Tracy Fire and substitutes it with a helicopter that has no response capabilities to the EAEC and a future deal where ACFD will share \$250,000 with Tracy Fire. Clearly ACFD has demonstrated that it is opposed to Tracy Fire receiving any compensation even if it does not affect ACFD's funding. Tracy Fire has not been consulted as to their needs and their assessed impacts. At the very least the committee should require the applicant to provide the \$500,000 that it had determined was necessary in the RPMPD but clearly this is not enough. This is just another case where the applicant is unwilling to mitigate the impacts to San Joaquin County.

Water Resources

Mountain House Community Services District (MHCSD) has control over the recycled water for the EAEC. MHCSD is controlled by the San Joaquin County Board of Supervisors that has passed a resolution opposing the project until its concerns for air quality, public services and other impacts have been mitigated. Control of the recycled water for this facility is in the hands of a governing body that is hostile to the project. Until an agreement between MHCSD and the applicant has been executed there is no recycled water available to this project. The main concern of NMFS and the DFG has been that this project utilizes recycled water. Without an agreement between the applicant and MHCSD this project has no secure recycled water supply.

In a May 29, 2003 letter (Exhibit5) from the Department of Water Resources to BBID the DWR has informed BBID that they must perform a complete EIR under CEQA to divert water to any other project other than the Mountain House Development. Without this certified EIR BBID cannot even divert water to the EAEC outside of its historic diversion patterns. Since no such EIR has been prepared by BBID the fresh water supply is also not assured for this project. This project at the present time is not assured of any water supply and is incapable of being certified at the present time.

Exhibit 1

NOV History for Delta Energy

SITE NAME	NOV#	NOV@	REG	COMMENTS	STATUS
Delta Energy Center	A44227	03/13/02	1-522.7	Related to ED # 03Q97	Pending Final Disposition
Delta Energy Center	A44234	03/14/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44234	03/14/02	1-522.7	DOD 8/19/02, Related to ED #03Q95	Pending Final Disposition
Delta Energy Center	A44232	03/15/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44232	03/15/02	1-522.3	DOD 8/19/02, Related to ED #03Q95	Pending Final Disposition
Delta Energy Center	A44233	03/16/02	1-522.7	DOD 8/19/02, Related to ED # 03Q93	Pending Final Disposition
Delta Energy Center	A44233	03/16/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44244	03/17/02	1-522.7	Related to ED #03R10	Pending Final Disposition
Delta Energy Center	A44226	03/17/02	1-522.7	Related to ED #03Q94	Pending Final Disposition
Delta Energy Center	A44244	03/17/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44211	04/17/02	2-6-307	Excess emissions.	Pending Final Disposition
Delta Energy Center	A44212	04/18/02	2-6-307	Excessive emissions.	Pending Final Disposition
Delta Energy Center	A44213	04/19/02	2-6-307	Excessive emissions.	Pending Final Disposition
Delta Energy Center	A44216	04/19/02	2-6-307	Excessive emissions.	Pending Final Disposition
Delta Energy Center	A44242	06/03/02	1-522.7	Related to ED #03R08	Pending Final Disposition
Delta Energy Center	A44242	06/03/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44245	06/19/02	1-522.7	Related to ED #03R14	Pending Final Disposition
Delta Energy Center	A44245	06/19/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44246	06/20/02	1-522.7	Related to ED #03R15	Pending Final Disposition
Delta Energy Center	A44246	06/20/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44240	06/21/02	1-522.7	Related to ED #03R05	Pending Final Disposition
Delta Energy Center	A44240	06/21/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44241	06/23/02	1-522.7	Related to ED #03R06	Pending Final Disposition
Delta Energy Center	A44241	06/23/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44243	07/01/02	1-522.7	Related to ED #03R09	Pending Final Disposition
Delta Energy Center	A44243	07/01/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44235	07/02/02	1-522.7	DOD 8/19/02, Related to ED #03Q98	Pending Final Disposition
Delta Energy Center	A44235	07/02/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44236	07/08/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44236	07/08/02	1-522.7	DOD 8/19/02, Related to ED #03Q99	Pending Final Disposition

Exhibit 2

NOV History for
Delta Energy

SITE NAME	NOV#	NOV@	REG	COMMENTS	STATUS
Delta Energy Center	A44228	07/09/02	1-522.7	Related to ED #03R00	Pending Final Disposition
Delta Energy Center	A44214	07/09/02	2-6-307	Excessive emissions.	Pending Final Disposition
Delta Energy Center	A44237	07/13/02	1-522.7	DOD 8/19/02, Related to ED# 03R01	Pending Final Disposition
Delta Energy Center	A44237	07/13/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44229	07/14/02	1-522.7	Related to ED #03R02	Pending Final Disposition
Delta Energy Center	A44215	07/14/02	2-6-307	Excessive emissions	Pending Final Disposition
Delta Energy Center	A44238	07/17/02	1-522.7	Related to ED #03R03	Pending Final Disposition
Delta Energy Center	A44238	07/17/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44230	07/24/02	1-522.7	Related to ED #03R07	Pending Final Disposition
Delta Energy Center	A44239	07/28/02	1-522.7	Related to ED #03R04	Pending Final Disposition
Delta Energy Center	A44239	07/28/02	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Delta Energy Center	A44231	08/04/02	2-1-307	DOD 8/5/02 Related to ED #03Q10	Pending Final Disposition
Delta Energy Center	A44217	08/11/02	2-6-307	Excessive emissions	Pending Final Disposition
Delta Energy Center	A44220	10/15/02	2-6-307	DOD 10/16/02 related episode D3R88.	Pending Final Disposition
Delta Energy Center	A45001	12/12/02	2-6-307	Related 03T33	Pending Final Disposition
Delta Energy Center	A44222	01/19/03	2-6-307	Related to BID 03445	Pending Final Disposition
Delta Energy Center	A45002	03/26/03	2-6-307	Related 03V63	Pending Final Disposition

Exhibit 3

NOV History for Los Medanos

SITE NAME	NOV#	NOV@	REG	COMMENTS	STATUS
Los Medanos Energy Center	A11181	08/13/01	2-1-307	Failure to Meet Permit Condition	Pending Final Disposition
Los Medanos Energy Center	A11179	08/19/01	2-1-307	Source Test by Avagadro Group, LLC, Sept 2001	Cancel
Los Medanos Energy Center	A11179	08/19/01	2-1-307	Source Test by Avagadro Group, LLC, Sept 2001	Cancel
Los Medanos Energy Center	A11180	08/19/01	2-1-307	Source Test by Avagadro Group LLC, Sept 2001	Cancel
Los Medanos Energy Center	A11180	08/19/01	2-1-307	Source Test by Avagadro Group LLC, Sept 2001	Cancel
Los Medanos Energy Center	A11188	10/31/01	2-6-502	Title 5 Semi Annual Report No Issued NOV's Noted	Pending Final Disposition
Los Medanos Energy Center	A44210	01/05/02	2-6-307	DOD 8/28/02 Reg # Air Episode Plan	Pending Final Disposition
Los Medanos Energy Center	A11193	05/15/02	2-1-307	ED # 03M192, Emission Excess for NOx	Resolution, Mutual Settlement
Los Medanos Energy Center	A44209	08/24/02	2-1-307	Related to 13Q63 DOD 8/28/02	Pending Final Disposition
Los Medanos Energy Center	A44219	11/20/02	2-6-307	DOD 11/20/02 related episode 03S90	Pending Final Disposition
Los Medanos Energy Center	A44224	02/28/03	1-522.7	Indicated excess not reported (03V75).	Pending Final Disposition
Los Medanos Energy Center	A44225	03/01/03	1-522.7	Indicated excess not reported (03V76).	Pending Final Disposition

CREAM OF THE CROP

Barber's clients
really pay their
dos.
— Community,
B2



Exhibit 4-A

The Record Tracy

Community
Schools & Spo
Commuting
Business
Weather
Entertainment

Saturday,
Andy Samuelson, Tr
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Sleepy roads fall victim to choking tr

Long drive, short fuse creating peril on bucolic byways
By Judy Sheppard
Record Staff Writer

There's a lot of history down these two-lane roads, swooping gracefully over steep, tan-suede hills or running past places where people once worked coal mines and kilns.

Most of the thousands of commuters rushing from their homes in San Joaquin County to their jobs in the Bay Area probably don't care.

They do care about avoiding the maddening stop-and-go rhythm of Interstate

highways 205 and 580, and shaving every second off their commutes. They seek swifter time on the back roads that predate the clogged monster highways — and the problems are following them.

"It's the wild wild west out there," said Stephen Wilcox, a California Highway Patrol officer who's worked at the Tracy office since 1982.

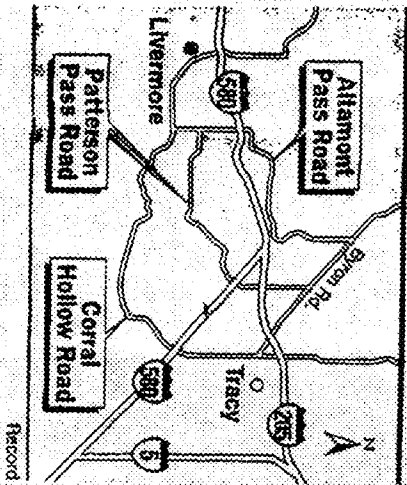
Patrols are only "occasional" — there's been no increase in officers in his office for 20 years — and drivers know it. Though numbers weren't immediately available,

Wilcox said accidents and speeding have dramatically increased on Patterson Pass, Corral Hollow Road and Altamont Pass, all narrow alternatives to the highways.

"The driving (on the back roads) is much more aggressive," he said. People complain about others who roar around other vehicles on the right-hand shoulder and on curves, hills and double-yellow lines.

And, on top of all that, when the worst happens, it's hard to get help. Cell phone services often fail so far out, no cell towers

Please see ROADS, B5



Continued from B1

exit, and, once they're alerted, emergency vehicles have no extra lane or shoulder to get in the scene quickly, he added.

But we have very definite plans in the immediate future to have more than occasional presence there," he said.

Long commuters and short patterns are the obvious culprits on both the highways and byways. But some say back-road misbehavior is brought on mainly by new residents, who have moved to San Joaquin County for handsome homes and now face hours on the road.

"The only real problem is people who came from the Valley but don't know how to drive to the Valley," said Raul Gack, a plasterer who commutes to San Jose on I-580 but comes home using Patterson Pass and talked after stopping one afternoon at the Arco AM/PM gas station. "People just get crazy."

It's really dangerous. That road there — he gestures to the ribbon of road appearing and disappearing in the hills behind him — "it meant for passing and people are using it for a damn freeway and we all know it."

But everybody's passing desperately for new fast routes, constantly discussing routes and jealously guarding little-known byways, said Glenn Daley, who works at the same gas station.

"More and more, people — if they come on a new route, find out what's going on on it and like it, they don't like it when others get on it," she said. "Here they are, enjoying their route to work, nice scenery, and they get annoyed when new ones come along."

Anybody not familiar enough with the road to go as fast as others is an obstacle, William



BYGONE BYWAYS: Passengers along Tracy's hills are becoming fewer and farther between as more and more commuters clog back roads in an effort to beat the crowds. The

Back-roads driving tips

- Remember the three-quarter second rule when following traffic: It takes three quarters of a second to see a problem, three-quarters to react.
- The maximum speed posted isn't always the safest speed.
- Bring your patience. You're

- Be aware of problems other than traffic — such as potholes and rock slides.
- Watch those blind curves — especially if you're on a motorcycle.

— *Officer Stephen Wilcox, Tracy CHP*

tickets that cost him more than \$1,000.

you can save 10 minutes it will seem like an hour, because

California Highway Patrol plans to boost its presence off the beaten path in hopes of putting a dent in increasingly reckless driving and speeding.

But commuters are also quickly driving over history, said Chace Koster, chairperson of the Tracy Historical Museum.

Patterson Pass has already lost its name. Once a way to reach ranches in the hills, it was renamed Mountain House Park way in 1997 by San Joaquin County supervisors who said it would help make Mountain House a successful county project.

"We fought to keep the name," she said of the historical society's battle. "We objected."

legendary Lincoln Highway, conceived in 1913 as the nation's first reliable coast-to-coast road especially for automobiles.

According to the Lincoln Highway Association Web site, until the '40s, when faster, wider federal highways drained it of most of its traffic, the road in the '20s and '30s was often bumper-to-bumper. One of Tracy's main thoroughfares, 11th Street, was also part of the Lincoln Highway, and a chunk of asphalt from its early days resides in the museum, volunteer Dolores Comes said.

Photo: photo by CALIFORNIA

Exhibit 5

STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, Governor

DEPARTMENT OF WATER RESOURCES

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JUN 10 2003

01-AFC-4

Mr. Rick Gilmore
General Manager
Byron Bethany Irrigation District
Post Office Box 160
Byron, California 94514-0160

CALIF ENERGY COMMISSION

JUN 16 2003

Dear Mr. Gilmore:

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Enclosed is the fully executed "Agreement Between the Department of Water Resources of the State of California and the Byron-Bethany Irrigation District regarding the Diversion of Water from the Delta." The Agreement was signed by the Director on May 28, 2003.

Article 3 of the Agreement provides that the District shall serve as lead agency and the Department as responsible agency under the California Environmental Quality Act, with respect to this Agreement. Prior to diverting water outside BBID's historic diversion season other than to serve Mountain House development, please submit to the Department any necessary environmental documents to address the changes provided for in this Agreement. We request BBID consult with the Department throughout the CEQA process, but consultation earlier in the process, during the development of the project description and determination of whether the project is exempt, is permitted and strongly encouraged.

If you have any questions or need additional information, please call me at (916) 653-4313.

Sincerely,

for Robert B. Cooke
Dan Flory, Chief
State Water Project Analysis Office

Enclosure

cc: Ms. Cheri Davis ✓
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